



# RULE-MAKING ORDER

**CR-103P (May 2009)**  
(Implements RCW 34.05.360)

**Agency:** Department of Ecology

A.O. # 07-12

**Permanent Rule Only**

**Effective date of rule:**

**Permanent Rules**

X 31 days after filing.

☐ Other (specify) \_\_\_\_\_ (If less than 31 days after filing, a specific finding under RCW 34.05.380(3) is required and should be stated below)

**Any other findings required by other provisions of law as precondition to adoption or effectiveness of rule?**

☐ Yes ☒ No If Yes, explain:

**Purpose:** The Dangerous Waste Rules set forth waste management standards for all Washington state dangerous waste generators, transporters, and facilities. Federal rules were incorporated and state-only requirements were updated, including modifying pre-permit application requirements for siting criteria, updating publications on Chemical Test Methods and Biological Testing Methods 80-12, and various clarifications and corrections.

**Citation of existing rules affected by this order:**

Repealed:

Amended: Chapter 173-303 WAC, Dangerous Waste Regulations

Suspended:

**Statutory authority for adoption:** Chapter 70.105, 70.105D

**Other authority :**

**PERMANENT RULE (Including Expedited Rule Making)**

Adopted under notice filed as WSR 09-03-073 on January 15, 2009 (date).

Describe any changes other than editing from proposed to adopted version: See Attachment A. If you would like to receive a copy of the rationale for the changes, The Concise Explanatory Statement is available from Robert Rieck, PO Box 47600, Olympia, WA 98504. You may request a copy at [rori461@ecy.wa.gov](mailto:rori461@ecy.wa.gov) or view the document at <http://www/laws-rules/activity/wac173303.html>

If a preliminary cost-benefit analysis was prepared under RCW 34.05.328, a final cost-benefit analysis is available by contacting:

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**Date adopted:** 6/30/09

**NAME (TYPE OR PRINT)**

Jay J. Manning

**SIGNATURE**

*Jay Manning by Polly Zohm*

**TITLE**

Director, Department of Ecology

**CODE REVISER USE ONLY**

OFFICE OF THE CODE REVISER  
STATE OF WASHINGTON  
FILED

**DATE:** June 30, 2009

**TIME:** 12:44 PM

**WSR 09-14-105**

(COMPLETE REVERSE SIDE)

**Note: If any category is left blank, it will be calculated as zero.  
No descriptive text.**

**Count by whole WAC sections only, from the WAC number through the history note.  
A section may be counted in more than one category.**

**The number of sections adopted in order to comply with:**

<b>Federal statute:</b>	New	_____	Amended	_____	Repealed	_____
<b>Federal rules or standards:</b>	New	_____	Amended	<u>47</u>	Repealed	_____
<b>Recently enacted state statutes:</b>	New	_____	Amended	_____	Repealed	_____

**The number of sections adopted at the request of a nongovernmental entity:**

New	_____	Amended	_____	Repealed	_____
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**The number of sections adopted in the agency's own initiative:**

New	_____	Amended	<u>42</u>	Repealed	_____
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**The number of sections adopted in order to clarify, streamline, or reform agency procedures:**

New	_____	Amended	_____	Repealed	_____
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**The number of sections adopted using:**

<b>Negotiated rule making:</b>	New	_____	Amended	_____	Repealed	_____
<b>Pilot rule making:</b>	New	_____	Amended	_____	Repealed	_____
<b>Other alternative rule making:</b>	New	_____	Amended	_____	Repealed	_____

# ATTACHMENT A

## Differences Between Proposed and Final Rule

This portion of the responsiveness summary shows changes made to the rule language after it was proposed January 2009. These are the changes that will be adopted based on comments received on the proposed rule amendments, plus editorial corrections and clarifications. Rule language changes from the proposed rule to the final adopted rule are shown by using ~~strikeout~~ and underline.

### 1. WAC 173-303-040 "Closure" means:

- The requirements placed upon all recycling, used oil, and TSD facilities, plus some generators, and some transporters to ensure that all such facilities are closed in an acceptable manner (see also "post-closure"), and
- ~~The process of taking a dangerous waste management unit or a recycling unit~~Once taken out of service, ~~the~~ and properly cleaning up and or decontaminating of a dangerous waste management unit or a recyclingthe unit and any areas affected by releases from the unit.

**Rationale for change:** The second bullet of the proposed definition of "closure" was modified to better define closure of a dangerous waste management unit or recycling unit. Closure is not the process of taking a unit out of service, as the second bullet had suggested. Closure is the process of cleaning or decontaminating a unit after that unit has received its known final volume of dangerous waste. The unit would be considered out of service after it was no longer being used for processing waste.

**2. WAC 173-303-110(3)(a) SW-846 Methods.** *Test Methods for Evaluating Solid Waste, Physical/Chemical Methods, EPA Publication, SW-846* (Third Edition (November 1986) as amended by Updates I (dated July 1992), II (dated September 1994), IIA (dated August 1993), IIB (dated January 1995), III (dated December 1996), and IIIA (dated April 1998), IIIB (dated July 2005), and ~~IVA and IVB~~ Final Update IV (dated ~~January~~ February 2007), which is incorporated by reference. The Third Edition of SW-846 and its Updates (document number 955-001-00000-1) are available from the Superintendent of Documents. Update IIIA is available through EPA's Methods Information Communication Exchange (MICE) Service. MICE can be contacted by phone at (703) 821-4690. Update IIIA can also be obtained by contacting the U.S. Environmental Protection Agency, Office of Solid Waste (5307W), OSW Methods Team, 1200 Pennsylvania Ave., NW, Washington, D.C. 20460. Copies of the Third Edition and all of its updates are also available from the National Technical Information Service (NTIS), 5285 Port Royal Road, Springfield, VA 22161, (703) 605-6000 or (800) 553-6847;

**Rationale for change:** Editorial correction for SW-846 updates.

**3. WAC 173-303-110(5) Testing Method Petition Process.** Equivalent testing methods. Any person ~~must~~ may request department approval for the use of an equivalent testing method by submitting a petition, prepared in accordance with WAC 173-303-910(2), to the department.

**Rationale for change:** In response to comments, the words testing is added back to the text to maintain consistency with section 910(2) Petitions and the introductory paragraph in section 110(1). Must is changed back to may to clarify that the petition process does not have to be followed in every instance where alternative test methods are used.

**4. WAC 173-303-140(2)(a) SW-846 Testing Methods.** Land disposal restrictions for wastes designated in accordance with WAC 173-303-070 (3)(a)(i), (ii), and (iii) are the restrictions set forth by the Environmental Protection Agency in 40 CFR Part 268 which are incorporated by reference into this regulation, as modified in (c) through (f) of this subsection, and the restrictions set forth in subsections (3) through (7) of this section. The words "regional administrator" (in 40 CFR) will mean the "department," except for 40 CFR Parts 268.5 and 268.6; 268 Subpart B; 268.42(b) and 268.44 (a) through (g). The authority for implementing these excluded CFR sections remains with the U.S. Environmental Protection Agency. The word "EPA" (in 40 CFR) means "Ecology" at 40 CFR 268.44(m). The exemption and exception provisions of subsections (3) through (7) of this section are not applicable to the federal land disposal restrictions. Where the federal regulations that have been incorporated by reference refer to 40 CFR 260.11, data provided under this section must instead meet the requirements of WAC 173-303-110~~(3)~~(a).

**Rationale for change:** The last sentence is being modified to clarify that references to analytical methods in addition to those available in SW-846 are included.

**5. WAC 173-303-300(5)(f) General Waste Analysis.** Where applicable, the methods for meeting the additional waste analysis requirements for specific waste management methods as specified in WAC 173-303-400(3) which incorporates by reference the regulations in 40 CFR Part 265 Subparts F through R, 265.1034, 265.1063(d), 265.1084, 268.4(a) and 268.7 for interim status facilities and in WAC 173-303-140 (4)(b), 173-303-395(1), 173-303-630 through 173-303-670, and 40 CFR 264.1034, 264.1063(d), 264.1083, 268.4(a) and 268.7 for final status facilities. Note that data provided from laboratory analyses for WAC 173-303-400(3) which incorporates by reference 40 CFR Part 265 Subparts F through R, WAC 173-303-140(4)(b), 173-303-395(1), 173-303-630 through 173-303-670, 40 CFR 268.4(a) and 268.7 must meet the requirements of WAC 173-303-110~~(3)~~;

**Rationale for change:** In response to comments, Ecology is changing the proposed WAC citation reference at WAC 173-303-300(5)(f) from subsection 110(3) to section 110. This change allows facilities to use alternative test methods for waste analysis plans. Also, the change removes restrictions on test method selection for hazardous waste air emissions. These changes will allow waste analysis plans approved in permits without limitation to analytical methods in SW-846.

**6. WAC 173-303-370(2)(b) Manifest System.** Note any discrepancies as defined in subsection ~~(45)~~(a) of this section~~((;))~~ on each copy of the manifest;

**Rationale for change:** Correction of citation error.

**7. WAC 173-303-380(1)(c) Facility Recordkeeping.** Records and results of waste analyses, waste determinations (as required by 40 CFR Parts 264 and 265, Subpart CC), and trial tests required by WAC 173-303-300, General waste analysis, and by 40 CFR sections 264.1034, 264.1063, 264.1083, 265.1034, 265.1063, 265.1084, 268.4(a), and 268.7. Note that data from laboratory analyses for 40 CFR 268.4(a) and 268.7 must meet the requirements of WAC 173-303-110~~(3)(a)~~;

**Rationale for change:** The proposed rule is revised in response to comments. The proposed rule references WAC 173-303-110(3)(a); this revision references all of section 110 so that test methods are not restricted to SW-846 methods. Also, we limit the requirement to use only analytical methods listed in WAC 173-303-110 to specific regulatory citations. These changes will allow waste analysis plans approved in permits to use analytical methods not found in SW-846. The reference to Subpart CC is clarified by indicating it is located in 40 CFR Parts 264 and 265.

**8. WAC 173-303-380(1)(f) Facility Recordkeeping.** Monitoring, testing, or analytical data, and corrective action where required by 40 CFR Part 265 Subparts F through R and sections 265.1034 (c) through (f), 265.1035, 265.1063 (d) through (i), 265.1064, and 265.1083 through 265.1090 for interim status facilities (incorporated by reference at WAC 173-303-400 (3)~~(a)~~), and by WAC 173-303-630 through 173-303-695 and 40 CFR sections 264.1034 (c) through (f), 264.1035, 264.1063 (d) through (i), 264.1064, and 264.1082 through 264.1090 for final status facilities (incorporated by reference at WAC 173-303-690, 173-303-691, and 173-303-692). Note that data provided from laboratory analyses for WAC 173-303-400(3) which incorporates by reference 40 CFR Part 265 Subparts F through R, WAC 173-303-140(4) (b), 173-303-395(1), 173-303-630 through 173-303-680, 173-303-693 through 695, 40 CFR 268.4(a) and 268.7 must meet the requirements of WAC 173-303-110~~(3)(a)~~;

**Rationale for change:** The proposed rule is revised in response to comments. The proposed rule references WAC 173-303-110(3)(a), this revision deletes subparagraph (3)(a) and references all of section 110, so that test methods are not restricted to SW-846 methods. Also, we limit the requirement for analytical methods to be in WAC 173-303-110 to specific regulatory requirements (such as analysis to support land disposal restrictions).

**9. WAC 173-303-380(2)(c) Manifest Record Keeping.** The estimated or manifest-reported weight, or volume and density, where applicable, of the dangerous waste must be recorded, using one of the units of measure specified in Table 1, below; and

TABLE 1	
Unit of Measure	Code <sup>1</sup>

**Rationale for change:** Pounds, short tons and kilograms were deleted from Table 1, since these were redundant entries. The full table is not copied here in the interest of saving space.

**10. WAC 173-303-400(3)(c)(iii) Interim status facility standards** (Where ~~the federal regulations that~~ 40 CFR 265 Subparts F through R, W, DD, and EE have been incorporated by reference refer to 40 CFR 260.11, data provided under this section must instead meet the requirements of WAC 173-303-110 ~~(3)(a)~~).

**Rationale for Change:** Ecology is revising proposed language to clarify which federal citations contain test methods that need to meet requirements of WAC 173-303-110.

**11. WAC 173-303-400(3)(c)(xiii)(A) Landfills.** "Subpart N - landfills." An additional sentence reads: "An owner/operator must not landfill an organic/carbonaceous waste or an EHW, as defined by WAC 173-303-080 through 173-303-100, except at the EHW facility at Hanford" as allowed under WAC 173-303-700 or as allowed under WAC 173-303-140(4).

**Rationale for change:** The rule now includes a reference to section 700 to clarify disposal options at the EHW facility at Hanford and disposal allowances in section 140(4).

**12. WAC 173-303-400(3)(c) Interim Facility Standards.** Section 265.115 is modified by changing "qualified Professional Engineer" to "independent qualified registered professional engineer."

**Rationale for change:** The word "qualified" is added to the description of an independent registered professional engineer in order to maintain consistency with the definition in section 040. This was an oversight in the proposed rules. This same change occurs 9 times throughout (400)(3)(c) in places where the state citation modifies the RCRA reference as indicated above. Not all of the changes are listed here in order to save space.

**13. WAC 173-303-515(8) Used Oil Standards.** Standards for used oil transporters and transfer facilities. For the purpose of managing materials under this section, 40 CFR Parts 279.40 through 279.47 are incorporated by reference except that the test methods at WAC 173-303-110 (3)(a) must be used.

**Rationale for change:** The reference to subparagraph (a) in the section 110 citation has been deleted so that used oil testing is not restricted solely to SW-846 methods. This will maintain consistency with the section 515(3) applicability statement which requires use of test methods in 110(3).

**14. WAC 173-303-515(9) Used Oil Standards.** Standards for used oil processors and rerefiners. For the purpose of managing materials under this section, 40 CFR Parts 279.50 through 279.59 are incorporated by reference except that the test methods at WAC 173-303-110 (3)(a) must be used.

**Rationale for change:** The change and rationale is the same as for citation number 13.

**15. WAC 173-303-515(10) Used Oil Standards.** Standards for used oil burners who burn off-specification. For the purpose of managing materials under this subsection, 40 CFR Parts 279.60 through 279.67 are incorporated by reference except that the test methods at WAC 173-303-110 (3)(a) must be used.

**Rationale for change:** The change and reasoning is the same as for citation number 13.

**16. WAC 173-303-515(13)(b) Used Oil Standards.** Where the federal regulations that have been incorporated by reference refer to 40 CFR 260.11, data provided under this section must instead meet the requirements of WAC 173-303-110 (3)(a).

**Rationale for change:** The change and reasoning is the same as for citation number 13.

**17. WAC 173-303-610(6) and (11) Certification of closure.** Within sixty days of completion of closure of each dangerous waste management unit (including tank systems and container storage areas), and within sixty days of the completion of final closure, the owner or operator must submit to the department by registered mail, a certification that the dangerous waste management unit or facility, as applicable, has been closed in accordance with the specifications in the approved closure plan. The certification must be signed by the owner or operator and by an independent qualified registered professional engineer.

**Rationale for change:** The addition of the word “qualified” will make the description of professional engineer consistent to the phrase defined in section -040.

**18. WAC 173-303-620(1)(e) Financial Requirements.** Except as provided in (c) of this subsection, the requirements of subsections (3), (4), (8), (9) and (10) of this section, apply to owners and operators of off-site recycling facilities and processors/re-refiners of used oil, except the term "recycling unit" will replace the terms "dangerous waste management unit" or "regulated unit."

**Rationale for change:** Grammatical correction.

**19. WAC 173-303-645(9)(g)(iii)Ground Water Monitoring List.** For any "Ground-Water Monitoring List" Appendix ((IX)) compounds found in the analysis pursuant to (g)(ii) of this subsection, the owner or operator may resample within one month or according to ~~at~~ an alternative site-specific schedule approved by the director and repeat the analysis for those compounds detected. If the results of the second analysis confirm the initial results, then these constituents will form the basis for compliance monitoring. If the owner or operator does not resample for the compounds ((found pursuant to)) in (g)(ii) of this subsection, the dangerous constituents found during this initial "Ground-Water Monitoring List" Appendix ((IX)) analysis will form the basis for compliance monitoring.

**Rationale for change:** Proposed text was revised to correct grammatical errors.

**20. WAC 173-303-690 Air emission standards for process vents.** ~~(3) Where the federal regulations that have been incorporated by reference refer to 40 CFR 260.11, data provided under this section must instead meet the requirements of WAC 173-303-110(3)(a).~~

**Rationale for change:** This proposed citation is being deleted entirely. Ecology recognizes that testing performed for hazardous waste air emissions from process vents uses test methods that are not available in WAC 173-303-110.

**21. WAC 173-303-691 Air emission standards for equipment leaks.** ~~(3) Where the federal regulations that have been incorporated by reference refer to 40 CFR 260.11, data provided under this section must instead meet the requirements of WAC 173-303-110(3)(a).~~

**Rationale for change:** This proposed citation is being deleted entirely. Ecology recognizes that testing performed for hazardous waste air emissions from equipment leaks uses test methods that are not available in WAC 173-303-110.

**22. WAC 173-303-695 Containment buildings.** The requirements for containment buildings at 40 CFR Part 264 Subpart DD are incorporated by reference. The words "regional administrator" will mean "department." The sentence at 40 CFR 264.1101(c)(42) is modified by changing "qualified Professional Engineer" to "independent qualified registered professional engineer".

**Rationale for change:** An oversight is corrected by adding the word "independent" to the engineer description. The 40 CFR reference is changed to the correct citation.

**23. WAC 173-303-806(8) Permit completeness.** The department will not issue a final facility permit before receiving a complete application, except for permits by rule or emergency permits. An application for a permit is complete when the department receives an application form and any supplemental information which are completed to the department's satisfaction. The department may consider ~~Aan~~ application for a permit to be ~~is-complete~~ notwithstanding the failure of the owner or operator to submit the exposure information described in subsection (12) of this section. The department may deny a permit for the active life of a dangerous waste management facility or unit before receiving a complete application for a permit.

**Rationale for change:** This paragraph is being revised to clarify that facilities need to submit exposure information for a permit application. If the facility owner or operator does not submit the referenced exposure information, the department will evaluate the circumstances and may consider a permit to be complete even without the exposure information.